

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES

v.

GARY NEWELL,

Defendant

CRIM. NO. 03-10370-DPW

MOTION TO CONTINUE EVIDENTIARY HEARING DATE

Defendant Gary Newell respectfully requests that the Court continue the hearing on his motion to suppress evidence currently scheduled to begin on July 26, 2005 to a date in the fall of 2005. As reason therefore, defense counsel learned this morning that Dr. Dan Craig, the detector dog expert retained by the defense in this matter, is experiencing sudden and serious health problems that will require surgery.

In support of this motion, the defendant states that he is charged with conspiracy to distribute marijuana in this case. The Government's case, in part, is based upon items seized from the defendant's truck on January 24, 2003 as a result of the use of a Massachusetts State Police canine unit known as Mako during a motor vehicle stop.

Dr. Craig is an expert in the field of training and deployment of canines in drug investigations. His testimony is crucial to the defendant's motion to suppress in that it will assist the Court, *inter alia*, in evaluating Mako's training and reliability as a drug detector dog.

Dr. Craig and defense counsel have been working together for several months on this case. Having completed his extensive document review, Dr. Craig was scheduled to meet with defense counsel on Monday to prepare for the hearing. This morning Dr. Craig notified counsel that on Saturday, he developed serious health problems will require immediate, extensive diagnostic testing and surgery in the next few weeks. The details of Dr. Craig's health problems are set forth in defense counsel's accompanying affidavit. Consequently, he will be unable to travel to Boston to testify as a defense witness next week.

At this late date, the defendant cannot hire an expert with qualifications comparable to Dr. Craig's who would be ready to testify next week. Consequently, a postponement of the motion to suppress hearing is necessary to protect the defendant's constitutional rights and in the interest of justice.

WHEREFORE, the defendant respectfully requests that the Court grant his motion to continue.

Counsel has discussed this motion with Assistant District Attorney Rachel Hershfang who has not yet decided whether she will assent to it.

Dated: July 18, 2005

Respectfully submitted,  
Gary Newell,  
By his attorney,

A handwritten signature in cursive script, appearing to read "Debra A. DelVecchio", is written over a horizontal line.

Debra A. DelVecchio  
B.B.O. No. 542139  
DEL VECCHIO & HOUSEMAN  
15 Front Street  
Salem, MA 01970  
(978) 740-5999

AFFIDAVIT OF COUNSEL

Debra A. DelVecchio, being duly sworn, deposes and states that the following is true based upon my information and belief:

1. I was appointed to represent Gary Newell, an indigent defendant, in the above-entitled case which is currently pending before Judge Douglas P. Woodlock in the United States District Court.
2. This morning, Dr. Dan Craig contacted me by telephone to report that on Saturday, July 16, 2005, he developed back pain serious enough to require emergency room care. Diagnostic testing undertaken beginning on that date has revealed that he has bilateral lumbar degeneration affecting his sciatic nerves. This acute condition is expected to require surgical intervention known as a facetectomy within the next few weeks.
3. During the course of his diagnostic testing, Dr. Craig's physicians also discovered for the first time that he has a significant heart murmur and an abdominal aortic aneurism, the latter of which will need surgical repair as soon as possible.
4. At the present time, Dr. Craig is in significant pain, and is unable to walk much less travel. On a positive note, he is expected to make a full recovery following surgery. Dr. Craig's physicians are expected to complete their testing within the next two weeks, at which point his surgeries will be scheduled. He anticipates that he will be available to testify no later than the first week of October.

5. All of the information contained in my foregoing motion to continue is true to the best of my knowledge and belief, and is incorporated into this affidavit as if fully recited here.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 8<sup>TH</sup> DAY OF JULY, 2005.



Debra A. DelVecchio  
B.B.O. No. 542139

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion and affidavit were delivered to Assistant United States Attorney Rachel Hershfang at her office by FAX to (617) 748-3965 on July 18, 2005.



Debra A. DelVecchio  
B.B.O. No. 542139